

From: Edward DeSpain
To: Microsoft ATR
Date: 1/24/02 7:54pm
Subject: Microsoft Settlement

In Re: Comments on the Microsoft (MS) case - January 24, 2002

Dear Sirs:

1. Anti-trust law is intended to protect consumers and the American people collectively, it is not supposed to be, first and foremost, a weapon or shield for competitors.
2. Microsoft is a monopolist, or so it has been adjudged. It is certainly the owner of the source of monopoly power. Competitive operating systems are not permitted to easily provide the full technical interface between computers and programs written to run with Windows. The current Lindows case is ample evidence that the latent monopoly tendencies are unaffected by the travails of the past couple of years. MS will yield this power only as a last resort and will fight every vestige of arbitrariness in any decisions.
3. The essential source of the MS monopoly power lies in its exclusive control over access to the Applications Program Interface (API) of the Windows operating system(s). Everything else MS produces can be readily supplied by the market. The unique feature of most MS products is their reliance on, and ability to define, the Windows API.
4. Widespread public access to the API would unleash powerful competitive alternatives to the MS products, with enhanced features and/or lower prices. Access to the economic rents emanating from control over the API would provide strong incentives for competitive software writers, both extant and potential. Access must be sufficient to allow rival operating systems providers to include essential functionality to their own products such that programs that work with Windows operating systems are not unreasonably precluded from use with other operating systems or other software..
5. Almost all of the problems arising from the MS monopoly position can be attenuated by breaking the exclusive MS nexus to the API.
6. Conversely, none of the proposed remedies, other than those aimed at liberalizing access to the API, directly addresses the root problem. Breaking up MS leaves control over the API with one of the successor companies, fines penalize MS stockholders, but leave the source of monopoly power intact. Most of the other remedies are, at best public relations or, at worst, a sop to influential rivals. None get at root causes.
7. The enormous administrative and legal costs attending the proposed remedies would be alleviated if such remedies were left to the market after freeing access to the API. Economic rents would be quickly competed away and the innovative forces currently foreclosed to rivals would give birth to new products from rivals to the MS monolith. The focus of anti-trust enforcement would be exactly where it belongs and the market would determine the allocation of benefits and punishment without undue favor. Both MS and rivals would be subject to market discipline and consumers would be the ultimate beneficiaries.

8. MS would still be the lead organizer of Windows standards, but the discipline of the marketplace would force them to be more responsive to the demands of rivals, partners and, especially, customers. Failure to bend to these demands would quickly induce competitive alternatives.

Please consider just where the MS market power comes from. Remedy this and you will go far toward providing an equitable outcome for all. Ignore it and no other remedy will produce a satisfactory solution.

Thank you,

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